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CORRESPONDENCE

September 17, 2007

The Honorable Susan Oki Mollway
U.S. District Court Judge
District of Hawaii
300 Ala Moana Blvd.
Honolulu, Hawaii 96850-0338

Re: Hawaii Children's Blood and Cancer Group vs. Hawai'i Pacific Health, et al.,
Civil No. CV 03-00708 SOM-LEK

Dear Judge Mollway:

Pursuant to the Court's order to report on the status of the case in First Circuit Court, *Woodruff, et al., vs. Hawai'i Pacific Health, et al.*, Civil No. 02-1-0090-01 (BIA), we write advise to advise you that the trial which was set for October 1, 2007, was continued for a third time, to April 7, 2008. At present, the primary remaining claims in the State court are Plaintiff HCBCG's claims under Chapters 480 (Sherman Act) and 481 (Lanham Act), Hawaii Revised Statutes, and claims for tortious interference. Judge Ayabe once again had a choice between entering adverse findings against Defendants or continuing trial, and he continued trial and reopened discovery for Plaintiffs.

The third continuance is due to Defendants' discovery fraud in withholding and denying the existence of key documents. Plaintiffs had previously requested production of hospital claims on which the employment-related claims in the State case are based. Defendants and their counsel first promised to produce them, but failed, and later denied that they possessed them at all. The discovery master in the State case had on several occasions accepted the representations of Defendants' counsel that the documentation of the hospital claims had been lost or destroyed, despite several requests for them and motions to compel discovery Plaintiffs made from February 27, 2002 to the present.

The hospital claims contain billings for numerous procedures which Defendants were afraid would be deemed false claims. The hospital claims are those Defendants submitted for spinal taps, bone marrow biopsies, and administration of conscious sedation performed by a nurse who was neither licensed

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nor credentialed to perform those procedures and was unsupervised when she undertook to perform them with the knowledge and authorization of her employer, Defendant Kapi'olani Medical Center for Women and Children. Defendants constructed a pretext against Plaintiffs which they reported to the DHHS Office of Inspector General to cover up the hospital claims, in fact denying that they had billed for the procedures about which they were worried. Defendants had also denied in the State case that they possessed the hospital claims.

On August 1 and 15, however, in discovery conferences with Magistrate Judge Leslie E. Kobayashi in CV05-00521, counsel for the Defendants admitted that they have possessed the requested hospital claims both on microfiche and in electronically stored data all along. Plaintiffs allege Defendants targeted them because they made compliance reports that led to the discovery that the nurse had kept a diary of the procedures, which conclusively proved which procedures she had performed without supervision. Defendants had a duty to disclose the claims for unlicensed and unsupervised procedures under their corporate integrity agreement, but instead they falsely represented to the OIG that no claims had been submitted for those procedures to avoid a multi-million dollar liability, and having their hospital claims undergo the close scrutiny to which Plaintiffs will subject them. Although there are hundreds of hospital claims for Plaintiffs to analyze over the next month or two, the first five claims which Defendants produced contain billings for procedures that were never performed, and are otherwise facially false.

In the meantime, Defendants continue to use the stay in this case and the trial delay in the State case opportunistically, to engage in the anticompetitive conduct of which Plaintiff HCBCG has complained, and which has been condemned by several independent pediatric oncology program surveys.

Please contact the undersigned if you have any questions.

Very truly yours,

/s/ Rafael del Castillo
Rafael G. del Castillo

cc: Kenneth S. Robbins, Esq.